

GOVERNMENT OF ANDHRA PRADESH
ABSTRACT

LANDS – Hyderabad District – Revision Petition filed by Mohd. Zafarullaha Khan S/o Bismillah Khan and another represented by their GPA Mohd. Younus S/o Mohd. Sufi R/o H. No. 3-5-593/A, Vittalwadi, Narayanaguda, Hyderabad under Section 12.A (2) of A.P. Land Encroachment Act,1906 against the Order of MRO-Asifngagar vide File No. MS/861/2004 dated 15.3.2004 and confirmed by the RDO – Hyderabad vide Case No. B/1036/2004, dated 09.09.2004 in respect of Premises No. 10-5-1/1 (New) [old No. A-6-1/1] admeasuring 438.6 Square Yards situated at Masab Tank, Hyderabad - Disposed off – Orders – Issued.

Revenue (Assignment.III) Department

G.O. Ms.No. 34

Dated 12.01.2012.

Read the following :-

- (1) Hon'ble High Court Order dated 06.02.2009 in W.P. No. 28432 of 2008 filed by Mohd. Zafarullaha Khan S/o Bismillah Khan and another.
- (2) Revision Petition dated 10.02.2009 filed by Mohd. Zafarullaha Khan S/o Bismillah Khan and another represented by their GPA Mohd. Younus S/o Mohd. Sufi R/o H. No. 3-5-593/A, Vittalwadi, Narayanaguda, Hyderabad under Section 12.A (2) of A.P. Land Encroachment Act,1906 .
- (3) Government Memo. No. 6525/Assn.III(2)/2008-2, dated 23.3.2009.
- (4) Letter No. E/5328/2010, dated 01.07.2010 of the District Collector – Hyderabad.
- (5) Government Memo. No. 6525/Assn.III(2)/2009, dated 15.7.2010.
- (6) Interim Order dated 21.7.2010 of Hon'ble High Court in W.P. No. 17608 of 2010 filed by Mohd. Zafarullaha Khan S/o Bismillah Khan and another.
- (7) Interim Order dated 28.7.2010 of Hon'ble High Court in W.P.M.P. No. 22244 and 22245 of 2010 W.P. No. 17608 of 2010 filed by Mohd. Zafarullaha Khan S/o Bismillah Khan and another.
- (8) Letter No. E/5328/2010, dated 24.12.2010 of the District Collector – Hyderabad.
- (9) Order dated 30.3.2011 of the Hon'ble High Court of A.P, in W.P. No. 32848 of 2010.
- (10) Government Letter No. 6525/Assn.III(1)/2009, dated 02.09.2011.

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ORDER :-

In pursuance of the Hon'ble High Court Order dated 06.02.2009 in W.P. No. 28432 of 2008, through the reference 2nd cited one Sri Mohd. Younus S/o Mohd. Sufi R/o H. No.3-5-593/A, Vittalwadi, Narayanaguda, Hyderabad G.P.A holder of Mohd. Zafarullaha Khan S/o Bismillah Khan and Mrs. Rakhsan Khan w/o Mohd. Zafarullaha Khan filed a Revision Petition dated 10.02.2009 before the Government under Section 12.A (2) of A.P. Land Encroachment Act,1906 against the Order of MRO-Asifngagar vide File No. MS/861/2004 dated 15.3.2004 and confirmed by the RDO – Hyderabad vide Case No. B/1036/2004, dated 09.09.2004 in respect of Premises No. 10-5-1/1 (New) [old No. A-6-1/1] admeasuring 438.6 Square Yards situated at Masab Tank, Hyderabad and requested to pass any such further order or orders which the Authority may deem fit and proper.

2. In the reference 3rd read above, Government have stayed the proceedings No. MS/861/2004, dated 15.3.2004 issued by MRO-Asifnagar, Hyderabad District until further orders taking into consideration of the grounds put forth by the Revision Petitioner, and directed that mesh and seal be removed and the petitioners shall not be dispossessed /disturbed from the applied property building No. 10-5-1/1, Masab Tank, Hyderabad, and the District Collector – Hyderabad has been requested to furnish parawise remarks on the Revision Petition for taking further action.

3. In the reference 4th read above the District Collector – Hyderabad has submitted that the land admeasuring 361.11 Square Meters (bearing Premises No. 10-5-1/1A) in T.S. No. 17, Ward – 37, Block – F of Mallepally Village of Asifnagar Mandal is classified as 'ABADI' in Col. No. 10 and "G Non-ISF" in Col. No.20 of the TSLR and located adjacent to main road leading from Banjara Hills, Road No.1 was illegally grabbed by one Sri Zafarullah Khan and has constructed a (3) storied building. To this effect, the MRO-Asifnagar Mandal vide Notice No. Ms/861/2002, Dated 11-12-2003 has issued Notice under Section (7) of the A.P. Land

Encroachment Act III of 1905. The notice was served on concerned even after giving ample opportunity to submit explanation, but the land grabber has failed to respond to the notice and as such orders under section (6) of the APLE Act III of 1905 has been passed vide MRO Proceedings No. Ms/861/2004, Dated: 15-3-2004. Accordingly, Possession of the land along with building has been taken over by the MRO under cover of panchanama on 27-3-2004.

4. Aggrieved by the orders of the MRO, Asifnagar the encroacher Shri. Zafarullah Khan has filed an appeal petition under Section (10) of the A.P Land Encroachment Act III of 1905 before the Revenue Divisional Officer, Hyderabad Division. The Revenue Divisional Officer, Hyderabad vide Appeal No.B/1036/2004, Dated: 9-9-2004 has dismissed the appeal filed by Shri. Zafarullah Khan. The appellant has not filed any revision petition before any authority challenging the orders passed by the Revenue Divisional Officer, Hyderabad Division.

5. Shri. Mohd. Zafarullah khan has applied for regularization under G.o.Ms.no. 166, Dated: 16-2-2008 and the Tahsildar, Asifnagar Mandal has submitted a report to this office duly rejecting the regularization proposal as it is highly useful for public purpose.

6. The Tahsildar Asifnagar Mandal has further reported that One Shri. Mohd. Younus S/o Mohd. Sufi, GPA Holder of Mohd. Zafarullah Khan, Mrs. Rakshan Khan W/o Zafarullah khan, both residing in Ziddha has filed a Writ Petition No. 28432/2008 before the Hon'ble High Court challenging the eviction orders passed by the M.R.O. and confirmed by the RDO, Hyderabad Division in the appeal, upon which the Hon'ble High Court has issued an interim order dated: 21-1-2009 to maintain "status-quo" by both are the parties till 21-1-2009 and extended up to 6-2-2009, during the period the writ petitioner broke open the seal and lock of the said premises, which was in possession of the Government and trespassed into the building and violated the orders of the Hon'ble High Court. The said W.P.28432/2008 has been disposed on 6-2-2009, wherein the Hon'ble Court ordered *"to avail the remedy of the revision under section 12-A of the Act. When such an effective alternative remedy is available to the petitioner, this court is not inclined to entertain the writ petition, that too, at this length of time. The Writ is accordingly dismissed"*.

7. In pursuance of the above orders in WP. No. 28432/2008, Shri. Zafarullah Khan has approached the Government and filed a revision petition under section 12-A of the APLE Act and the Government, and the Government issued orders in Memo No. 6525/Assn.III(2)/2008-2, Dated: 23-3-2009 duly staying the proceedings of the MRO, Asifnagar, until further orders and also directed that mesh and seal be removed and the petitioner shall not be disposed/disturbed from the suit property and also to furnish the para-wise remarks on the Revision petition and detailed report on the subject matter for taking further action by the Government.

8. The District Collector has further submitted that the land in question is one of the prime land which is located in the centre place of the city and it can be utilized for public purpose and therefore, requested to vacate the stay orders granted vide Memo No.6525/Assn.III(2)/2008-2, Dated 23-3-2009 at an early date, so as to enable to take possession of the above property for public utilization, since any delay in the matter may give a scope for further litigation and set a precedent in similar cases, where land grabbers may take advantage.

9. In the reference 5th read above, Government keeping in view the report of the report of the District Collector – received through the reference 4th read above, have vacated the stay orders issued through the reference 3rd read above pending final disposal of the Revision Petition filed by the Revision Petitioner before the Government.

10. Whereas, the Hon'ble High Court in the reference 7th read above viz. Interim Order dated 28.7.2010 of Hon'ble High Court in W.P.M.P. No. 222444 and 22245 of 2010 W.P. No. 17608 of 2010 filed by Mohd. Zafarullah Khan S/o Bismillah Khan and another *inter alia* has issued a direction to the respondents to maintain status quo with regard to possession of the building constructed on the disputed land as on 15.7.2010, pending further orders.

11. Whereas, in the reference 9th read above the Hon'ble High Court in its Order dated 30.03.2011 in W.P. No. 32848 of 2010 while disposing the W.P. directed the Government to dispose of the Revision Petition filed by the Petitioners on merits expeditiously, preferably within six weeks from the date of receipt of that order.

12. Heard the Revision Petition on 06.04.2011, the Counsel for the Revision Petitioner, Joint Collector – Hyderabad were present and advanced their arguments. The Counsel for the

Revision Petitioner has requested for another date for filing more arguments and documents. Subsequently, the Counsel has submitted some more copies of documents and the case was finally called on 15.9.2011.

13. The Counsel for the Revision Petitioner and the Law officer O/o the District Collector, Hyderabad were present and heard the arguments.

14. The District Collector, Hyderabad has given background details stating that Mallepally Village of Asifnagar Mandal Hyderabad District is an Ex.Jagir Village of Surfekhas. The total extent of this village is 900 acres, out of which 660 acres was under the possession and use of Ex-Nizam's Army. As regard 660 acres of the land the same was under the possession and use of Ex-Nizam's Army, which was known as Hyderabad Cantonment. Consequently, on demobilization of Hyderabad Army a decision was taken by the erstwhile Government of Hyderabad in Ref. No. 1181, GAD dated 21.3.1951 directing the then Collector to take over possession of all Army Buildings. Accordingly, the possession was taken over and from 1951 to this date.

15. The District Collector has further reported that the petition schedule property is situated in TS No. 13, Block-F, Ward No.37 of Mallepally Village, Asifnagar Mandal, Hyderabad District. The total extent of the said Ts is 752 Square Meters which is classified and recorded as "G Non-ISF Land". During Town Survey and Boundaries Act, a notice has been issued and the same has been published in the District Gazette No.41 dated 06.08.1977. Neither, the petitioners vendors nor anybody have ever agitated regarding the entries in Town Survey Records within a stipulated period of 3 years as required under Section 14 of the Act, as such the boundary has become final.

16. It has also been stated that the Petitioner had encroached the Government land to an extent of 449.70 Square yards in TS No. 13/P, Block-F, Ward No.37 situated at Masab Tank, Asifnagar Mandal, Hyderabad District and started construction on it without obtaining NOC from the concerned authorities i.e. the District Collector, taking cognizance of the said action of the respondent had initiated action under the provisions of the Andhra Pradesh Land Encroachment Act, 1905 and issued Notice under Section 7 of the Land Encroachment Act, vide No. MS/861/2002, dated 11.12.2003 and the same got served on 13.12.2003 calling for his explanation. Till the expiry of the stipulated time he has not submitted any explanation even after giving sufficient time and ample opportunity. Then, a speaking order had been passed under Section 6 of the A.P Land Encroachment Act 1905 vide Proceedings No. MS/861/2002, dated 15.3.2004 and got served the same on 24.03.2004.

17. The District Collector, Hyderabad also submitted that aggrieved by the orders passed by the MRO-Asifnagar, the Petitioner had preferred an Appeal Under Section 10 of the A.P. Land Encroachment Act, 1905, before the appellate authority i.e. the RDO & Sub Divisional Magistrate, Hyderabad Division and appeal was got admitted and numbered as CA No. b/1036/2004, after elaborated trial and lengthy arguments the RDO & Sub Divisional Magistrate Hyderabad has dismissed the claim of the appellant and upheld the orders passed by the MRO –Asifnagar vide Order No. CA/B/1036, dated 09.09.2004.

18. The District Collector – Hyderabad also contended that against the Orders passed by the RDO – Hyderabad Division, no further appeal has been preferred by the appellant, he has chosen to prefer an application for regularizing accepting that he had encroached the Government land and requested for regularization of his illegal occupation in terms of G.O. Ms. No. 508 Revenue Department, dated 20.10.1995. It has been further submitted that the petitioner also applied for regularization of land under reference in terms of G.O. Ms. No.166, Revenue Department, dated 16.2.2008 which was rejected by the District Collector, Hyderabad. Hence, the District Collector contended that the Revision petition is devoid of merits and liable for dismissal.

19. Whereas, the Revision Petitioner in his Revision Petition dated 10.2.2009 has submitted that originally on Smt. Wajidunnisa Begum W/o Mir Sajjad Khan was the owner of the Building bearing M. No. A-6-1/1 with compound wall situated at Masab Tank, Hyderabad. She sold the said property for valuable consideration vide registered sale deed dated 11.4.1958 in favour of Dennis Rubart Partridge. The said Dennis Rubart Partridge also purchased adjacent land admeasuring 400 Square yards from one Syed Mahamood Murtuza vide Registered Sale Deed dated 19.5.1958. Ever since the date of above purchase said D.R. Partridge was enjoying the above property in all admeasuring 981.33 Square yards as absolute

owner and exclusive possessor. His name was also shown in TSLR. Subsequently, D.R. Partridge had sold away the above property in all measuring 981.33 Square yards in favour of one Smt. Rukia Banu Begum vide Registered Sale Deed bearing Doc. No. 1969 of 1971 dated 20.09.1971. The said property was duly assessed by the Municipal Corporation of Hyderabad and renumbered as 10-5-1/1 (new), (old No. A-6-1/1) and Smt. Rukia Banu Begum paid the property taxes regularly. Thereafter Smt. Smt. Rukia Banu Begum had sold southern portion of the property bearing No. 10-5-1/1 admeasuring 438.6 Square yards in favour of Smt. Grace Iqbal Hussain Khan @ Kulsum Razia vide Registered Sale Deed being Document No. 1998 of 1973 dated 3.10.1973. Smt. Grace Iqbal Hussain Khan later sold the above property H.No. 10-5-1/1/A measuring 438 Square yards in favour of Mrs. Vicar Ewari w/o G.G.Ewari vide Registered Sale Deed being Document No. 1140 of 1978 dated 14.06.1978 and said Mrs. Vicar Ewari enjoyed the said property as lawful owner and paid the municipal taxes from time to time and has also paid NALA Tax before the Tahsildar, Golconda Taluq, Hyderabad.

20. Mrs. Vicar Ewari sold the said subject property in favour of petitioners herein vide registered sale deed document No.2928 of 1985 dated 14.11.1985. Ever since the date of purchase the petitioners are in possession and enjoyment of the said property as lawful owners and exclusive possessors. The said property was also mutated in their names in the year 1985 and they are paying property taxes regularly. They are also paying electricity consumption charges and other charges in respect of other amenities provided by the authorities till date. The petitioners are residing in Jeddah for the last several year and their representatives were looking after the affairs of the subject property at Hyderabad.

21. The Revision Petitioner also submitted that they have obtained permission for construction of new building after demolishing old building in premises No.10-5-1/1/A and the Municipal Corporation of Hyderabad after due verification of relevant records and title documents had issued permission for construction of building vide No. 10/41/2001 in file No. 765/CR4/TP4/2002, dated 17.1.2003. Accordingly, the petitioners had constructed new building by demolishing old structures.

22. The Revision petitioner also submitted that the RDO – Hyderabad failed to appreciate the facts as well as the records filed before him erroneously confirmed the orders of the MRO-Asifnagar dated 15.3.2004 vide Order dated 9.9.2004 which is nonest in the eye of law and per se illegal and contrary to the law laid down by the Apex Court. The Revision petitioner inter alia given the following grounds in support of his claim.

- (i) The eviction Order passed by the MRO-Asifnagar and confirmed by the RDO – Hyderabad is per se illegal, nonest and without any jurisdiction;
- (ii) The Respondents ought to have considered that the Land Encroachment Act had no application, since the Government could not claim the title basing only on TSLR Records;
- (iii) The Respondents ought to have referred the matter to appropriate forum or to the civil court as there was a bonafide dispute as to the title since the petitioners had produced relevant title documents way back from 1958 in their favour as the learned respondent had no jurisdiction do deal with the matter as per the provisions of the Act. The Respondents cannot decide title in themselves;
- (iv) The Respondent erred in law while adjudicating the title through TSLR Records which is not conclusive proof of title even as per the A.P.Survey and Boundaries Act as well as per the law laid down by the APEX Court and A.P. High Court.

23. The Revision Petitioner also contended that the Tahsildar cannot invoke Land Encroachment Act and seek eviction in respect of bonafide title dispute cases. The Supreme Court of India has already held in several cases that the Government cannot initiate Land Encroachment Act . The Revision Petitioner has also submitted they have already filed application for regularization under G.O. Ms. No.166, Revenue Department, dated 16.2.2008 before the District Collector and ready to pay the penalty to Government and requested to consider his case.

24. Having heard both the parties and perused the material furnished by the Collector – Hyderabad District and the Revision Petitioner, it is observed from the TSLR Record furnished by the District Collector – Hyderabad in the Remarks Column No. 23, the name of D.R.Partridge S/o F.A. Patridge is shown. The Revision Petitioner derived the title from the said D.R.Partridge by way of Registered Sale Deeds since 1958. The said property was assessed by the Municipal

Corporation of Hyderabad and renumbered as 10-5-1/1 (new) (Old No.A-6-1/1). Construction permission was obtained on 17.1.2003 and the Residential Building has been completed. The District Collector – Hyderabad could not provide the details as to how this land has gone to private hands since 1958 and how the names of private persons, vendor of the Revision Petitioner have been recorded in the TSLR Record. Except TSLR Record, no other record is available with the Revenue Officials.

25. In view of the above situation, the Revision Petitioner has requested not to punish him for no fault of him as the property is shown as private property even in Revenue records since 1958. It is also observed that under protest the Revision Petitioner has filed an application for Transfer of Rights under the provisions of G.O. Ms. No. 166, Revenue (Assn.POT) Department, dated 16.2.2008 and also requested to now consider his case under the said orders.

26. Further, during the hearing the Advocate for the Revision Petitioner has again requested to consider their case for regularization under the provisions of G.O. Ms. No. 166, Revenue (Assn.POT) Department, dated 16.2.2008, to put an end to the issue though the land is being treated as private since 1958. The application for the same was already submitted by them to the District Collector, Hyderabad in time. Since the applicant has come forward for Regularization under the said orders and has established his possession by way of deriving the title documents way back from 1958 in their favour and also constructed a building after obtaining necessary permission on 17.1.2003 from the Municipal Corporation of Hyderabad, it will meet the ends of justice if his request for regularization is accepted.

27. Accordingly, the Revision Petition is disposed of with a direction to the District Collector - Hyderabad to dispose of the petitioner's application for regularization in terms of G.O. Ms. No. 166, dated 16.2.2008.

ANIL CHANDRA PUNETHA
PRINCIPAL SECRETARY TO GOVERNMENT

To
The Special Chief Secretary and Chief Commissioner
of Land Administration, AP Hyderabad.
The Collector – Hyderabad.

Copy to:

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(thro' Collector, Hyd.)
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/ Forwarded:: By Order/

SECTION OFFICER